

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

CHARLES H. LEE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 4:08CV573 TCM
	)	
ST. LOUIS CITY POLICE	)	
DEPARTMENT, et al.,	)	
	)	
Defendants.	)	

**OPINION, ORDER AND MEMORANDUM**

This matter is before the Court upon the application of Charles H. Lee for leave to commence this action without payment of the required filing fee. *See* 28 U.S.C. § 1915(a). Upon consideration of the financial information provided with the completed application, the Court finds that plaintiff is financially unable to pay any portion of the filing fee. Therefore, plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a).

**28 U.S.C. § 1915(e)**

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis at any time if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is

immune from such relief. An action is frivolous if "it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief can be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1974 (2007).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. *Denton v. Hernandez*, 112 S. Ct. 1728, 1733 (1992); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

### **The complaint**

Plaintiff seeks monetary relief in this action against defendants St. Louis City Police Department, Carle Carson (Moline Acres police officer), Moline Acres Police Department, and Anthony Carson (Carle Carson's brother). Plaintiff alleges that on June 17, 2005, "a group of St. Louis police officers" went to his home and arrested him. Plaintiff claims that "[o]nce [he] was released from jail," he returned home only to find that "[s]omeone [had] taken [his] belongings . . . [and the only people who had keys to his house] were the City of St. Louis Policemen [who] arrested [him]."

Plaintiff states that the jurisdictional grounds for filing this action in federal court are, as follows: "Illegal arrest, Illegal search & seizure, Falsified police report, False imprisonment, burglary, vandalism, confiscated property, Forgery of signature on documents, stating I gave permission to search my home."

To the extent that plaintiff is attempting to bring a 42 U.S.C. § 1983 action for the violation of his constitutional rights, the action must fail. Police departments are not suable entities under § 1983. *See Ketchum v. City of West Memphis, Ark.*, 974 F.2d 81, 82 (1992); *see also De La Garza v. Kandiyohi County Jail*, 2001 WL 987542, at \*1 (8th Cir. 2001) (sheriff's departments and police departments are not usually considered legal entities subject to suit under § 1983; local governments can be liable under § 1983 only if injury stems from official policy or custom). Moreover, plaintiff does not allege, nor does it appear, that defendant Anthony Carson is a state actor. *See, e.g., Parratt v. Taylor*, 451 U.S. 527, 535 (1981)(to state § 1983 claim, plaintiff must first establish that a person acting under color of state law committed actions which form the basis of the complaint), *overruled on other grounds, Daniels v. Williams*, 474 U.S. 327, 328 (1986). In addition, plaintiff's allegation that Carson "said that [he] did the thing in the police report" fails to state a claim or cause of action against this defendant.

The Court notes that the complaint is silent as to whether defendant Carle Carson, a Moline Acres police officer, is being sued in his official or individual capacity. Where a "complaint is silent about the capacity in which [plaintiff] is suing defendant, [a district court must] interpret the complaint as including only official-capacity claims." *Egerdahl v. Hibbing Community College*, 72 F.3d 615, 619 (8th Cir. 1995); *Nix v. Norman*, 879 F.2d 429, 431 (8th Cir. 1989). Naming a government official in his or her official capacity is the equivalent of naming the government entity that employs the official. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989). To state a claim against a municipality or a government official in his or her official capacity, plaintiff must allege that a policy or custom of the government entity is responsible for the alleged constitutional violation. *Monell v. Dep't of Social Services*, 436 U.S. 658, 690-91 (1978). The instant complaint does not contain any allegations that a policy or custom of a government entity was responsible for the alleged violations of plaintiff's constitutional rights. As a result, the complaint fails to state a claim upon which relief can be granted.

Last, to the extent that plaintiff is attempting to bring this action under 28 U.S.C. § 1332, subject matter jurisdiction does not exist, given that the amount in controversy is unspecified. See 28 U.S.C. § 1332. Moreover, the allegations in the complaint fail to state a claim or cause of action against any of the named defendants.

Accordingly,


**IT IS HEREBY ORDERED** that plaintiff's motion for leave to proceed in forma pauperis [Doc. #2] is **GRANTED**.

**IT IS FURTHER ORDERED** that plaintiff's motion for appointment of counsel [Doc. #4] is **DENIED**, as moot.

**IT IS FURTHER ORDERED** that the Clerk shall not issue process or cause process to issue upon the complaint, because the complaint is legally frivolous and fails to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B).

An appropriate order shall accompany this order and memorandum.

Dated this 29th day of May, 2008.

  
UNITED STATES DISTRICT JUDGE